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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,426	05/12/2006	Richard A. Rafferty	VIS002	7883
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RAYMOND R. MOSER JR., ESQ. MOSER IP LAW GROUP 1030 BROAD STREET 2ND FLOOR SHREWSBURY, NJ 07702			EXAMINER	LE, HUYEN D
			ART UNIT	PAPER NUMBER
			2615	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,426	<b>Applicant(s)</b> RAFFERTY, RICHARD A.
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 May 2006.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 21-41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 21-41 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 0/10/07

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Objections***

1. Claim 36 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 36 fails to further limit the subject matter of claim 32.

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 30 has been renumbered 30a.

***Claim Rejections - 35 USC § 112***

3. Claim 32 recites the limitation "the waterproof ear wax trap" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21-22, 25-26, 32-33, 35-38 and 40-41 are rejected under 35 U.S.C. 102(b) as

being anticipated by Haertl (U.S. patent 4,987,597).

Regarding claims 21-22 and 25-26, Haertl teaches an apparatus that comprises an ear wax trap (14) adapted to couple a hearing aid. The ear wax trap (14) comprises a micro-porous membrane that comprises foamed and stretched polytetrafluoroethylene, and the ear wax trap (14) is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Regarding claims 32-33 and 35-36, Haertl teaches an apparatus that comprises an ear wax trap (14) disposed within a removable member (the caps 12, 12.1, 12.2, 12.3, 12.4, 12.5, 13) of a hearing aid. The ear wax trap (14) is waterproof and comprises a micro-porous membrane as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Regarding claims 37-38 and 40-41, Haertl teaches an apparatus that comprises a hearing aid and an ear wax trap (14) disposed in the hearing aid (figures 1, 2, 3 and 16). The ear wax trap (14) comprises a micro-porous membrane that comprises foamed and stretched polytetrafluoroethylene, and the ear wax trap (14) is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 23, 34 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haertl (U.S. patent 4,987,597).

Regarding claims 23, 34 and 39, Haertl does not specifically disclose the micro-porous membrane (14) containing the pores as claimed. However Haertl does teach that the micro-porous membrane (14) has the extremely small pores (col. 2, lines 3-7).

Therefore, it would have been obvious to one skilled in the art to provide any range of extremely small pores in the membrane (14) of Haertl such as 9 billion pores per square inch for better protecting the hearing aid against the penetration of moisture.

8. Claims 24 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haertl (U.S. patent 4,987,597) in view of Yoest (U.S. patent 5,970,157).

Regarding claims 24, 27 and 30, Haertl teaches an ear wax trap that comprises a micro-porous membrane 14) disposed in a receiver tube (figures 1-3) as claimed. Haertl does not specifically teach the receiver tube (2, 23) that is removably coupled to the receiver (4, 21) as claimed.

Yoest teaches a receiver tube (22, 1028) which is removably connectable to a hearing aid (figures 4, 5, 16) or coupled to a receiver (16, 1018, 1026, 824).

Since providing a receiver tube to be removably coupled to a hearing aid or a receiver is known in the art; it therefore would have been obvious to one skilled in the art to provide the receiver tube (2, 23) of Haertl, to be removably coupled to a hearing aid or a receiver, as taught by Yoest, for an easy fixing and replacing the parts in the hearing aid.

Regarding claims 28, 30a and 31, Haertl teaches the micro-porous membrane (14) that comprises foamed and stretched polytetrafluoroethylene, and the ear wax trap (the membrane 14) that is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Regarding claims 29, Haertl does not specifically disclose the micro-porous membrane (14) containing the pores as claimed. However Haertl does teach that the micro-porous membrane (14) has the extremely small pores (col. 2, lines 3-7).

Therefore, it would have been obvious to one skilled in the art to provide any range of extremely small pores in the membrane (14) of Haertl such as 9 billion pores per square inch for better protecting the hearing aid from moisture.

9. Claims 27-31 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoest (U.S. patent 5,970,157) in view of Haertl (U.S. patent 4,987,597).

Regarding claims 24, 27-28, 30, 30a and 31, Yoest teaches an apparatus that comprises a receiver tube (22, 1028) removably coupled to a receiver (16, 1018, 1026, 824) or a hearing aid and configured to fit within an ear of a user (figures 4, 5, 16). Further, Yoest teaches an ear wax barrier (24, 1024) comprising an ear wax trap (42) that is disposed within the receiver tube.

Yoest does not teach the ear wax trap (42) comprising a membrane as claimed. However, providing an ear wax trap comprising a micro-porous membrane is known in the art.

Haertl et al. teaches a micro-porous membrane (14) that comprises foamed and stretched polytetrafluoroethylene for an ear wax trap, and the membrane (14) that is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Since providing a micro-porous membrane for an ear wax trap in the hearing aid is known in the art; it therefore would have been obvious to one skilled in the art to provide the ear wax trap, as taught by Haertl, in the ear wax barrier of Yoest for better protecting the hearing aid against the penetration both of carwax as well as moisture.

Regarding claims 29, Haertl does not specifically disclose the micro-porous membrane (14) containing the pores as claimed. However Haertl does teach that the micro-porous membrane (14) has the extremely small pores (col. 2, lines 3-7).

Therefore, it would have been obvious to one skilled in the art to provide any range of extremely small pores in the membrane (14) of Haertl such as 9 billion pores per square inch for better protecting the hearing aid from moisture.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Voroba et al. (U.S. patent 4,870,688) teaches an apparatus of an auditory canal hearing aid.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SINH TRAN can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/  
Primary Examiner, Art Unit 2615

HL  
April 26, 2008